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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

APR 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Part 20 and 24 of the)	WT Docket No. <u>96-59</u>
Commission's Rules -- Broadband PCS)	
Competitive Bidding and the)	
Commercial Mobile Radio Service)	DOCKET FILE COPY ORIGINAL
Spectrum Cap)	
)	
Amendment of the Commission's)	GN Docket No. 90-314
Cellular/PCS Cross-Ownership Rules)	

REPLY COMMENTS OF BEAR STEARNS & CO. INC.

Bear Stearns & Co. Inc. ("Bear Stearns") hereby submits the following Reply Comments in connection with the above-captioned Notice of Proposed Rulemaking.^{1/}

I. INTRODUCTION

Bear Stearns has been extensively interested in and involved with the emerging PCS industry since the Commission's original allocation of spectrum to the service several years ago. In particular, Bear Stearns has been, remains and will continue to be involved in a number of major PCS transactions, including the underwriting of financing transactions involving both C-block and potential D, E and F block bidders and licensees. Bear Stearns thus is an interested party in this proceeding.

Having reviewed both the Notice and the initial comments of other interested parties, Bear Stearns offers the following brief Reply Comments with respect to license transfer and default issues.

^{1/} In the Matter of Amendment of Part 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, WT Docket No. 96-59, GN Docket No. 90-314, Notice of Proposed Rulemaking (released March 20, 1996) ("Notice").

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II. DISCUSSION

A. **The Commission Should Eliminate the Three-Year Transfer of Control Restriction for C and F Block Licenses**

The Commission's rules currently prohibit C- and F-block licensees from voluntarily assigning or transferring their licenses during the first three years following license grant.^{2/} For two years thereafter, license transfers are permitted only to transferees that also satisfy the entrepreneur's block eligibility criteria.^{3/} In the Notice, the Commission has tentatively decided to relax these requirements by allowing F-block licensees to transfer their licenses to other entities who qualify as entrepreneurs within the first three years. In proposing this modification, the Commission notes that the current rule "goes farther than to merely discourage speculative bidding in the entrepreneur's block auction."^{4/}

Bear Stearns agrees with the Commission's conclusion, and also urges that any corresponding rule change should be broadened to encompass C-block licensees as well.^{5/} The Commission already has in place and has proposed to retain unjust enrichment rules that will deter abuse of the competitive bidding process by speculative applicants. The three-year

^{2/} See 47 C.F.R. § 24.839(d)(2).

^{3/} Id.

^{4/} Notice at ¶ 62.

^{5/} See Comments of General Wireless, Inc. (April 15, 1996), at 7 (recommending that relaxation of transfer restriction be broadened to include C block licensees); US West Comments (April 15, 1996), at 8 (Commission should consider extending proposal to reduce three-year holding requirement to C block licensees as well).

no-transfer restriction is an onerous and unnecessary limitation on the financial flexibility of entrepreneurial entities.^{6/}

Bear Stearns believes that relaxation of the transfer restriction will give potential lenders and investors more assurances that, in a "worst case" scenario of financial distress, it will be possible to replace the original entrepreneur with another qualifying entrepreneur in advance of an actual default to the Commission -- thus avoiding the disastrous consequence of license revocation, and thereby increasing the willingness of such lenders or investors to commit capital to entrepreneur's block ventures. A number of PCS licensees already have expressed concern regarding the impact of the three-year holding period on the ability of designated entities to access capital markets, and a number of banks "have indicated that they are hesitant or unwilling to lend to designated entities without some level of comfort that they will be able to protect their investment should the venture experience financial distress within the first three years of license grant."^{7/} Bear Stearns strongly agrees that permitting license transfers between and among entrepreneurial entities

^{6/} See, e.g., Comments of DCR Communications, Inc. (April 15, 1996), at 12 (amendment of transfer restriction would "permit small businesses to make realistic and sometimes necessary business decisions, without permitting speculators or sham bidding"); Comments of General Wireless, Inc. (April 15, 1996), at 7 (agreeing that Commission's current anti-trafficking rule goes "farther than necessary, particularly when the Commission's unjust enrichment rules remain in place to discourage speculative bidding"); Comments of North Coast Mobile Communications, Inc. (April 15, 1996), at 14-15 (Commission should amend its anti-trafficking rules for broadband PCS designated entities, and given unjust enrichment penalties, "the proposed revision will not negatively affect the purpose behind the original rule").

^{7/} Comments of Devon Mobile Communications, L.P. (April 15, 1996), at 14 (citing Ex parte Letter of First National Bank of Maryland, PP Docket No. 93-253 (filed March 3, 1995); Ex parte Letter of NationsBank and NationsBanc Capital Markets, Inc., PP Docket No. 93-253 (filed Nov. 3, 1994)).

will help address this concern, and will provide designated entities with greater access to the capital they need to build and operate PCS systems.^{8/}

B. The Commission Should Promote Competitive Market Resolution of Default and Financial Distress Issues

In addition to relaxing the anti-trafficking restrictions for C and F block licensees, Bear Stearns urges the Commission generally to promote market-oriented solutions to avoid PCS license defaults to the Commission, and the accompanying investor and/or service disruption that such defaults would otherwise engender. Thus, for example, in conjunction with its relaxation of anti-trafficking restrictions, the Commission should clarify that it will be pre-disposed to approve a license transfer to a second DE, where (i) the second DE has a pre-existing contractual arrangement with the first DE that provides for a license transfer in circumstances where the first DE is unable to make its installment payments to the Commission on an independent basis, and (ii) the second DE has contributed capital to facilitate the installment payments made by the first DE.

Similarly, the Commission should clarify that any qualified designated entity -- and not merely those who initially qualified to bid in the C-block auction -- should be permitted to acquire multiple C and/or F block licenses without jeopardizing its continued eligibility as a designated entity under the Commission's rules. If, for example, a qualifying entrepreneurial entity that either has not been able to win any PCS licenses in the C-block auction, or was formed after the C-block auction but meets the Commission's requirements,

^{8/} Id. Bear Stearns agrees that "in situations where C block licensees experience changes in financial circumstances such that continued operation of the facilities and service to the public could be jeopardized, the modified rule would provide for a resolution that would benefit all parties involved, including the licensee's customers." Comments of North Coast Mobile Communications, Inc. at 15.

then that entity should be permitted to hold more than one C- or F-block PCS license -- either at auction or in the aftermarket -- without having the "valuation" of those licenses attributed for purposes of the eligibility rules.^{9/} The Commission already has stated that "normal projected growth of gross revenues and assets, or growth such as would occur . . . as a result of a licensee acquiring additional licenses . . . would not generally jeopardize continued eligibility as an entrepreneurs' block licensee."^{10/} It should clarify that this principle applies to all entities that meet the Commission's entrepreneurs' block requirements, whether or not they are actual C- or F-block bidders. Among other public interest benefits, this clarification will (1) provide a larger universe of designated entities with more business opportunities to acquire PCS licenses in the aftermarket, and (2) will provide C- or F-block licensees with more flexibility to negotiate contingent financing arrangements with other qualifying entities that may be capable of assisting them in cases of financial distress.

By encouraging creative market solutions to avoid default, the Commission will provide increased certainty to potential entrepreneurial investors that their investments will be protected; will give increased assurance of continuity of service to consumers; will ensure that PCS licenses remain in the hands of entities that qualify as entrepreneurs or small businesses; and will avoid the administrative cost and inefficiency of having to intervene in the marketplace to re-allocate PCS spectrum.

^{9/} See Notice at ¶ 33.

^{10/} Competitive Bidding, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 420 (1995) (emphasis added).

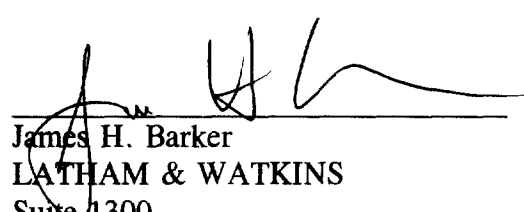
III. CONCLUSION

For the foregoing reasons, Bear Stearns urges the Commission to adopt the recommendations set forth above. The Commission should continue to promote a market-based framework for the development of PCS and CMRS services that will encourage investment in entrepreneurial companies, and ultimately provide the public with rapidly deployed and efficient mobile voice and data services.

Respectfully submitted,

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By:



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April 25, 1996

Certificate of Service

I, James H. Barker, on behalf of DIRECTV, Inc. hereby certify that on
April 25, 1996, a copy of the foregoing was delivered by hand to each of the following:

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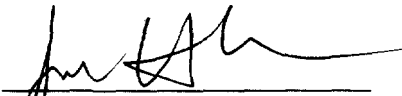
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